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	Application No.	Applicant(s)
	10/654,169	KUHL ET AL.
Notice of Allowability	Examiner	Art Unit
	Dionne Walls Mayes	1731
The MAILING DATE of this communication appe All claims being allowable, PROSECUTION ON THE MERITS IS herewith (or previously mailed), a Notice of Allowance (PTOL-85) NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RI of the Office or upon petition by the applicant. See 37 CFR 1.313	(OR REMAINS) CLOSED in this app or other appropriate communication IGHTS. This application is subject to	plication. If not included will be mailed in due course. THIS
1. 🗵 This communication is responsive to the Amendment filed	<u>on 9/15/2006</u> .	
2. ☑ The allowed claim(s) is/are <u>1-20 and 24-33</u> .		
 Acknowledgment is made of a claim for foreign priority un a)		
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2. Certified copies of the priority documents have	- ''	
3. Copies of the certified copies of the priority doc	cuments have been received in this i	national stage application from the
International Bureau (PCT Rule 17.2(a)). * Certified copies not received:		
Applicant has THREE MONTHS FROM THE "MAILING DATE" on noted below. Failure to timely comply will result in ABANDONM THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.	IENT of this application.	
 A SUBSTITUTE OATH OR DECLARATION must be submi INFORMAL PATENT APPLICATION (PTO-152) which give 		
5. CORRECTED DRAWINGS (as "replacement sheets") mus	t be submitted.	
(a) including changes required by the Notice of Draftspers	on's Patent Drawing Review (PTO-	948) attached
1) 🗌 hereto or 2) 📗 to Paper No./Mail Date		
(b) ☐ including changes required by the attached Examiner's Paper No./Mail Date		
Identifying indicia such as the application number (see 37 CFR 1. each sheet. Replacement sheet(s) should be labeled as such in the		
 DEPOSIT OF and/or INFORMATION about the deposit attached Examiner's comment regarding REQUIREMENT F 	sit of BIOLOGICAL MATERIAL n FOR THE DEPOSIT OF BIOLOGICA	nust be submitted. Note the AL MATERIAL.
Attachment(s) 1. □ Notice of References Cited (PTO-892)	5. ☐ Notice of Informal P	Patent Anniication
2. ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)	6. ☑ Interview Summary	
3. ☐ Information Disclosure Statements (PTO/SB/08),	Paper No./Mail Dat 7. ⊠ Examiner's Amendn	te
Paper No./Mail Date 4. Examiner's Comment Regarding Requirement for Deposit		ent of Reasons for Allowance
of Biological Material	9.	
		

EXAMINER'S STATEMENT/AMENDMENT

1. Claims 1-20 and 24-33 are allowable. The restriction requirement, as set forth in the Office action mailed on February 28, 2006, has been reconsidered in view of the allowability of claims to the elected invention pursuant to MPEP § 821.04(a). The restriction requirement is hereby withdrawn as to any claim that requires all the limitations of an allowable claim. Claims 7-8, 15-19, and 29-30, are no longer withdrawn from consideration because the claims require all the limitations of an allowable claim.

In view of the above noted withdrawal of the restriction requirement, applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

Once a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

2. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Mr. John Salazar on Monday, October 2, 2006.

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The application has been amended as follows:

IN THE CLAIMS:

In claim 1, line 2, after "winnowings", delete "in cigarette making", and, after "tobacco particles", delete "in" and replace with – during --,

line 3, delete "wherein", and replace with –comprising --,

In claim 7, line 1, replace "Claim 7(Withdrawn)" with – Claim 7 (Original) --,

In claim 8, line 1, replace "Claim 8 (Withdrawn)" with – Claim 8 (Original) --,

In claim 15, line 1, replace "Claim 15 (Withdrawn)" with –Claim 15 (Original) --,

and after "wherein", delete "the" and replace with –a--,

In claim 16, line 1, replace "Claim 16 (Withdrawn)" with -- Claim 16 (Previously Presented) --,

In claim 17, line 1, replace "Claim 17 (Withdrawn)" with -Claim 17 (Original) --, and after "of", delete "the" and replace with --a--,

In claim 18, line 1, replace "Claim 18 (Withdrawn)" with -Claim 18 (Original) --,
In claim 19, line 1, replace "Claim 19 (Withdrawn)" with -Claim 19 (Previously
Presented) --,

In claim 24, lines 1-2, after "winnowings", delete "in cigarette making in an air flow", and replace with – in a stream containing tobacco particles during the manufacture of cigarettes --,

line 6, after "unit", insert – for separating winnowings --,

In claim 29, line 1, replace "Claim 29 (Withdrawn)" with -Claim 29 (Previously Presented) --,

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In claim 30, line 1, replace "Claim 30 (Withdrawn)" with -Claim 30 (Previously Presented) --,

In claim 33, line 1, after "particles", delete "in" and replace with - during --.

- 3. The drawings filed on September 3, 2003 are approved by the Examiner.
- 4. The following is an examiner's statement of reasons for allowance: While the prior art of record may disclose and/or suggest a method of detecting / generating / measuring a size distribution of a stream of tobacco particles containing winnowings, it would not have been obvious to modify said art to compare the size distribution with a settable / nominal / optimal size distribution and continually adjust the separation of winnowings depending on the result of said comparison.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dionne Walls Mayes whose telephone number is (571) 272-1195. The examiner can normally be reached on Mon-Fri, 7AM - 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven P. Griffin can be reached on (571) 272-1189. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Dionne Walls Mayes
Primary Examiner

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October 2, 2006